Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Updating the Intercarrier Compensation	)	WC Docket No. 18-156
Regime to Eliminate Access Arbitrage	)	

COMMENTS OF WEST TELECOM SERVICES, LLC

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EXECUTIVE SUMMARY

West Telecom Services, LLC ("West")[1] submits these comments ("Comments") in response to the Further Notice of Proposed Rulemaking ("*FNPRM*") in WC Docket 18-156. Chairman Pai declared in his "Statement" that in this proceeding the Commission "attack[s] the 'silent scam' that is robocallers' abuse of the 8YY intercarrier compensation system." West agrees with all the Commissioners that these abuses should be stopped.

The Commission's proposed rules, however, do not narrowly target these specific illicit practices in a direct and expeditious matter. Rather, the abuses seem only a pretext for adoption, at the apparent urging of the large interexchange carriers ("IXCs"), of an inappropriate three-year transition period to a bill-and-keep regime for 8YY calling. Such proposals, unlike narrowly targeted rules, cannot be adopted without a thorough consideration of the potential substantial adverse impact on both consumers and providers of such a major change in the intercarrier compensation system.[2]

Instead of its proposed rules, the Commission should adopt specific rules prohibiting the illicit 8YY calling practices and enlist industry efforts to cooperate with the Commission in identifying and stopping the practices of "bad actors." In addition, the Commission should adopt a rule requiring all carriers to negotiate in good faith bilateral direct connection arrangements for the termination of all the traffic (of all types, of themselves and their affiliates) exchanged with another carrier if the traffic volume involved satisfies the industry standard for efficient direct

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[1] West Telecom Services, LLC ("West") is a wholly-owned subsidiary of West Corporation, a leading technology enablement company connecting people and businesses around the world.

[2] West also comments on the need for modification of specific tariff rule proposals, including recommending that rates not be set in an arbitrary manner and that any limit of one database query charge per call include an exception for situations in which a downstream provider makes a database query because it has not received all call information necessary for onward routing of a call, whether or not an upstream provider had made a database query.

connection of requiring facilities equivalent to 4 T-1s. With direct connections, the opportunity for arbitrage is substantially reduced, and because the connections are inherently efficient for both carriers, there is no need to defer adoption of a direct connection rule while the Commission takes the time for careful analysis of the impact of a move to bill-and-keep for 8YY traffic. Implementation of these more limited rules may be so effective in remediating the targeted calling practices as to obviate the need for the Commission even to consider changing the 8YY intercarrier compensation system, saving public as well as industry resources.

The Commission must also recognize that bill-and-keep is a totally inappropriate and unfair intercarrier compensation methodology when it comes to the unique *one-way traffic stream* of 8YY calling. 8YY calling has increased dramatically, and IXC marketing has accelerated its usage. Bill-and-keep was not intended as an appropriate compensation system when carriers cannot recover their costs from their customers or receive off-setting explicit subsidies. All providers supplying services essential for call termination in an 8YY call path are entitled to fair compensation for their services in routing 8YY calls.

Adoption of the bill-and-keep system urged by the IXCs, however, would amount to endorsing regulatory arbitrage by freeloading IXCs. They would receive free use of the networks of upstream providers, and they could continue to stimulate more and more network access via 8YY calling without having to pay a penny for such usage. The IXCs are the only providers in the call path with the ability to control traffic levels, and the only providers with the ability to receive compensation from their customers (the 8YY subscribers) for their services. Absent usage-sensitive access charges, upstream providers, who are required to complete calls regardless of any compensation, would have to either raise rates to their consumer customers, or reduce their services, because they would have to suffer unlimited, uncompensated network

usage by the IXCs. Consumers would end up subsidizing greater 8YY calling by fellow customers, and they would subsidize the windfall profits of the IXCs. The "free calling" promised them by the IXCs and their subscribers would be free only to the IXCs. In the highly concentrated market for 8YY subscriber services, the IXCs would even have limited incentive to pass on their cost savings in the form of price reductions to their subscriber customers.

In lieu of adopting a bill-and-keep proposal that would benefit only the IXCs, the Commission should adopt narrowly targeted rules and a direct connection negotiating obligation that would effectively and expeditiously target the abuses highlighted in the Chairman's statement. The Commission should reject IXC calls to move to bill-and-keep for 8YY origination because such an intercarrier no-compensation system is inappropriate for one-way 8YY traffic and would amount to codifying usage stimulation regulatory arbitrage by the IXCs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
8YY Access Charge Reform	)	WC Docket No. 18-156
	)	

COMMENTS OF WEST TELECOM SERVICES, LLC

West Telecom Services, LLC ("West")[3] submits these comments ("Comments") in response to the Further Notice of Proposed Rulemaking ("*FNPRM*") issued by the Federal Communications Commission ("Commission") in the above-captioned matter.[4]

I. INTRODUCTION – THIS PROCEEDING SHOULD NOW ADDRESS ONLY ELIMINATION OF 8YY ACCESS ARBITRAGE BAD PRACTICES.

West does not agree with the *FNPRM* that, "The current intercarrier compensation system for telephone calls made to toll free (8YY) numbers is rife with opportunities for arbitrage and fraud."[5] The potential for fraud exists in nearly any transaction within or outside

[3] West Telecom Services, LLC ("West") is a wholly-owned subsidiary of West Corporation, a leading technology enablement company connecting people and businesses around the world.

[4] *In the Matter of 8YY Access Charge Reform*, Further Notice of Proposed Rulemaking, WC Docket No. 18-156, FCC 18-76 (rel. Jun. 8, 2018) ("FNPRM"). *See also Public Notice*, Wireline Competition Bureau Announces Comment and Reply Comment Dates for Further Notice of Proposed Rulemaking on Toll Free (8YY) Calling Access Charge Reform, DA 18-694 (released Jul. 3, 2018); *8YY Access Charge Reform*, 83 Fed. Reg. 31099 (Jul. 3, 2018) (summarizing the *FNPRM* and establishing comment and reply comment deadlines, respectively, of Sept. 4, 2018, and Oct. 1, 2018).

[5] *FNPRM* at 1, ¶ 1. When the Commission considered the treatment of intercarrier compensation originating access (which includes 8YY traffic) in the *USF/ICC Transformation Order*, the Commission declined to establish a transition to a bill-and-keep compensation regime at that time, noting, *inter alia*, that it had less pressing concerns "with respect to network inefficiencies,

the communications industry, but such potential does not justify eliminating the compensation base for providers of legitimate services. Nor can such action be expected to prevent the potential for different types of fraud in the future.

The only aspects of 8YY intercarrier compensation that merit immediate Commission attention are the abusive practices of a few "bad actors" that have made fraudulent calls to toll-free numbers ("TFNs") in furtherance of 8YY access arbitrage schemes.[6] These are the practices, and the only practices, whose elimination is described in the Statement of Chairman Pai as the motivating force for and the goal of this proceeding.[7] Aggressive enforcement of Commission rules prohibiting such activities, combined with responsible industry cooperation

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arbitrage, and costly litigation." *See Connect America Fund et al.*, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ("*USF/ICC Transformation Order"* or *"USF/ICC Transformation FNPRM"*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) at ¶¶ 777, 800.

[6] Such practices would include the "sham 8YY calls" Verizon claims are part of traffic pumping schemes, as well as database queries concerning bogus calls to toll-free numbers controlled by a bad actor, and the access charges payable for repeated or protracted or endlessly looping robo-dialed calls without a real caller described in the Chairman's Statement. *See also FNPRM* at 10,¶ 27 and n. 78; *FNPRM* at 11 n.80. The Commission's proposed rules, however, do not focus on eliminating these practices, but instead deny all upstream providers in the 8YY call path, the vast majority of which are not bad actors, fair compensation for their services. In West's experience, however, the Commission's conclusion in the *USF/ICC Transformation Order* that arbitrage is far less pervasive with respect to originating access has been substantiated. While West believes the Commission should address the bad practices forcefully and promptly, West does not believe that they warrant a hasty move to bill-and-keep for 8YY originating access. When upstream providers have no alternative cost recovery mechanisms with respect to their customers or explicit subsidies, it is particularly problematical to authorize the IXCs to use the other providers' networks without any compensation, regardless of the increasing amounts of traffic the IXCs pump over those networks. Requiring good faith negotiation of direct connect arrangements for all traffic between providers (including their affiliates) where traffic warrants may at least partially mitigate the burdens on the upstream providers.

[7] *See Statement of Chairman Ajit Pai, FNPRM* at 47 ("Today, we also attack the "silent scam" that is robocallers' abuse of the 8YY intercarrier compensation system."). All Commissioners agreed that these bad practices should be addressed. *Cf. Dissenting Statement of Commissioner Jessica Rosenworcel*, *FNPRM* at 50. The Chairman's Statement makes no mention of a goal of eliminating compensation due intermediate and other upstream providers for services rendered.

and expanded direct connection arrangements, are the most effective means of ending the illicit practices.

The Commission should therefore reject the efforts of large interexchange carriers ("IXCs") (and of any others seeking free use of upstream networks in an 8YYcall path) to use the pretext of eliminating specific bad practices to propel the Commission into hastily implementing major changes in the 8YY access charge regime that would authorize freeloading on the networks of upstream service providers. Free use of upstream networks[8] would enable IXCs to take advantage of the reduced costs to grow windfall profits, especially where the highly concentrated market serving 8YY subscribers minimizes the impact of customer pressure to reduce the IXCs' prices. While it may be in the IXCs' interest to conflate "unreasonably inflated charges"[9] with "all charges IXCs have to pay" and to persuade the Commission to eliminate both, it is not in the public interest for the Commission to do so. The result sought by the IXCs would eliminate the IXC compensation due upstream providers in the path of a toll-free call for their call routing and other services necessary for toll-free call completion, and therefore it would seriously jeopardize market competition.[10] The vast majority of providers supplying necessary

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[8] *See* Letter from Steven Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-363 & 10-90, at 2 (filed Nov. 16, 2017) (transitioning 8YY traffic to bill-and-keep "would cost the largest cable operators almost $70 million annually and produce an unwarranted windfall for AT&T and other 8YY providers").

[9] *FNPRM* at 2, ¶4.

[10] Independent tandem services are a fundamental component of today's telecommunications network backbone, providing carriers of all types with efficient traffic exchange options. With many carriers relying on a relatively small number of providers for handling data queries, it is apparent that they have found use of intermediate providers' services more efficient than attempting to self-provide them. The availability of such services also promotes important public policy objectives—such as improved network diversity, network security, and disaster recovery—by adding network redundancy and alternative routing options. When a local exchange carrier ("LEC") or other service provider initiates a call to a TFN, if that provider does not operate its own tandem, or does not have access to the TFN database, then routing

services to complete 8YY calls have never participated in the bad practices the proposed rules purport to address. Moreover, the *FNPRM* has cited no specific Commission complaint proceedings addressing 8YY arbitrage concerns. Adoption of the 8YY originating access compensation changes sought by the IXCs would have a profound adverse impact on that vast majority of honest providers and on toll-free-calling consumers, and it would not be in the public interest.[11] The Commission should first implement the alternative of case-by-case enforcement[12] (coupled with implementation of narrowly-tailored rules prohibiting specific bad practices and requiring good faith negotiation of direct connect arrangements) before implementing the broad proposed rules likely to have a substantial adverse impact on industry competition, rules that may be unnecessary to address the limited problem of any 8YY access charge arbitrage by "bad actors.".

By declining now to adopt most of the proposed rules and instead limiting current action to addressing what all agree are bad and unlawful practices, the Commission can expeditiously

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information must be supplied by another provider, such as an independent tandem operator, which must perform the database "dip" and supply the routing information necessary to complete the call to an IXC's TFN customer. *See also FNPRM* at 21, ¶ 68. Neither the caller nor the called party is a customer of the independent tandem operator. Because the call is toll-free, the calling party does not expect to be charged for it. Because the called party is the customer of the IXC, it has already paid the IXC to receive toll-free calls. If the IXC is allowed to freeload on the intermediate provider's network and is not required to compensate the intermediate provider for its services, then there is no party left to compensate the intermediate provider. Because in past proceedings the Commission recognized the necessity to compensate the intermediate provider to ensure the call can be completed, the Commission properly treated 8YY traffic as originating access traffic, and properly declined to move it to bill-and-keep. As Commissioner Rosenworcel recognized, the current proposals, if adopted, could mean the end of toll-free calling for consumers. *See Dissenting Statement of Commissioner Jessica Rosenworcel*, *FNPRM* at 50.

[11] Given the highly concentrated state of the 8YY services provider market, where three companies control most of the market, it is highly speculative to assume that they would pass on any significant portion of cost savings attributable to decreased access costs to their customers, and consumers would likely receive no direct benefits.

[12] *See FNPRM* at ¶ 38.

adopt rules that are highly effective in remediating the specific abusive practices that have resulted in 8YY access arbitrage. As in other arbitrage scenarios, starting with the rules targeting access stimulation in the *USF/ICC Transformation Order*,[13] Commission rules declaring certain practices to be unreasonable under the Communications Act can be implemented quickly, and when combined with industry cooperation in identifying "bad actors" engaged in access arbitrage,[14] they are highly effective in identifying and stopping bad practices. The Commission should also give immediate attention to adopting rules establishing objective, traffic volume-based standards requiring good faith negotiations for promoting the establishment of efficient direct connections between carriers that will reduce the situations in which 8YY access charge payments will be required to compensate providers for the use of their networks.

The Commission should not defer rapid implementation of these important rules pending completion of its thorough and careful evaluation of the likely substantial costs and limited benefits for other providers and the public of the rule changes sought by the IXCs.[15] Prompt

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[13] *See*, *e.g.*, *USF/ICC Transformation Order* at ¶ 33.

[14] *See*, *e.g.*, *Notice of Ex Parte Meeting*, Letter from Helen E. Disenhaus, Counsel for HyperCube Telecom, LLC [predecessor of West], to Marlene H. Dortch, Secretary, dated February 14, 2014, WC Docket No. 13-39 *et al*. (describing industry cooperative efforts to resolve rural call completion problems) ("*HyperCube RCC Ex Parte*").

[15] West and others have previously detailed the harms to competition and to consumers that could result from eliminating 8YY access charges and thus denying intermediate providers the reasonable compensation to which they are entitled, including possible market exit, eliminating much market competition. In response to the Commission's inquiry as to how best to enable providers to recoup lost revenues, *FNPRM* at 2, ¶ 4; *id.* at 11, ¶ 30, West submits that the current system, which directly ties compensation to the services provided, and which allows market forces and competition to affect rates, is the best and most efficient means of ensuring fair compensation, particularly to intermediate providers, which are not in privity with either callers or the called parties subscribing to toll-free services. The Commission's proposal to "allow originating carriers to recover their costs primarily through end-user charges," *FNPRM* at 11, ¶ 30, is not only unexplained but irrelevant with respect to intermediate providers. The Commission has also failed to explain how it would make Connect America Fund ("CAF") funding available to intermediate providers. As the *FNPRM* recognizes, however, intermediate

implementation of narrowly targeted rules may well prove so effective in eliminating arbitrage situations that it will obviate the need to consider broader reform of the 8YY intercarrier compensation regime, which would be in the public interest by avoiding unnecessary expenditure of resources by the Commission as well as by interested parties.

II. THE COMMISSION SHOULD DETER ACCESS ARBITRAGE, NOT ELIMINATE COMPENSATION FOR PROVIDERS OF 8YY TRAFFIC ROUTING SERVICES.

The IXCs have apparently become victims of their own success in promoting the benefits of toll-free calling to both their toll-free number subscribers and consumers wanting to reach those subscribers. Calls to toll-free numbers have increased dramatically[16] as the IXCs have encouraged their customers not only to utilize multiple toll-free numbers to direct calls to particular offices, but also to utilize them so as to test the merits of alternative marketing approaches or as vanity numbers marketing their businesses. Toll-free hotlines for governmental and public service purposes have also proliferated significantly. The result has been that consumers are making many more such calls, even in an environment where most calls, not just those to toll-free numbers, are free of per-call charges.

With the success of the IXCs' TFN usage stimulation necessarily comes increased costs, including the 8YY access charge costs that the IXCs now seek to avoid. To maintain high profit levels without passing on all incurred costs to their toll-free number subscriber customers, the IXCs are apparently bent on using this proceeding to force intermediate providers to provide free

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providers offering tandem, transport, switching, and database query services provide services essential to toll-free termination in an environment where originating providers frequently lack the equipment necessary to provide these services so that their customers can make 8YY calls. *FNPRM* at 7, ¶ 15.

[16] *See FNPRM* at 2, ¶ 6.

inputs to the IXC services.[17] As a result, the IXCs are obfuscating the differences between 8YY traffic arrangements and those where the calling party is the paying customer. While the *FNPRM* 's premise is elimination of arbitrage abuses, if the IXCs have their way, the real result will be a grant to the IXCs of free access to services rendered by other providers to complete an ever-increasing number of calls to the IXCs' toll-free number subscribers. Moreover, the unwarranted shift to a bill-and-keep regime for 8YY services would do nothing to prevent such very damaging calling abuses as high-call-volume Telephony Denial of Service ("TDoS") attacks that may proliferate in a free-calling environment. TDoS attacks, when conducted for something of value, are often associated with extortion attempts and are not known to be widely driven by arbitrage. Some TDoS attacks appear to be motivated by little more than a desire of the fraudster to disrupt a business or agency. Irrespective of the fraudster's motivation, high-call-volume TDoS attacks cannot be deterred by the establishment of bill-and-keep, and may actually increase in a bill-and-keep environment.

The Commission should not be inveigled into ill-considered, hasty, and unnecessary "reform" of 8YY intercarrier compensation merely because the large IXCs aim to bootstrap such a process onto remediation of a limited number of 8YY calling abuse situations. Absent negotiated agreements and direct connect arrangements, tariffed access charges ensure all

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[17] Consumers accustomed to having flat rate service for calls to ordinary numbers certainly do not expect to be charged for calls to toll-free numbers. Additionally, the average consumer, particularly a younger consumer, has no concept of "toll" in the historic telecommunications meaning of "long distance toll." Having grown up in an environment in which there was little if any practical distinction between local and long distance service, and where area codes prefix nearly all calls but are increasingly unrelated to geography, young consumers understand a "toll" as a charge, and as in the case of express-lane highway tolls, the fees to use a lane are still tolls whether they relate to a local trip or to one the length of a state. Thus, when most consumers hear the term "toll-free," they deem it synonymous with the word "free," not synonymous with the phrase "free of long distance charges." When it comes to questions of deceiving consumers, it is inappropriate to hide behind decades-old industry terminology as a shield against charges of misrepresentation of the nature of a service offering. *Cf. FNPRM* at 27, ¶ 92.

intermediate providers in a call path receive compensation for critical services, since only the IXC, and neither the calling party nor the called party, is their customer.[18] If other providers are denied appropriate compensation, they will no longer be able to offer services essential to 8YY calling. Either calling will be adversely affected, or the IXCs will further extend their calling dominance, and re-establish their monopolies.[19]

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[18] The *one-way calling pattern for 8YY calling* is very different from the quintessentially balanced two-way calling pattern for mobile services, the services to which the Commission points as a basis for finding consumer benefits likely to result from a move to bill-and-keep. *See FNPRM* at 14, ¶ 40 (Commission apparently viewing CMRS *bill-and-keep* as the reason for the great increase in use of mobile services). 8YY call service to subscribers used to be called "IN WATS" (or Inward Wide Area Telecommunications Service) by AT&T, *FNPRM* at 3, ¶ 5, and it was a separate, inbound-only, one-way service that was a separate product from the outbound WATS service that in effect gave a customer a flat-rated long distance line. There is therefore good reason to, and the Commission should, take into account the *complete imbalance of one-way 8YY traffic* in evaluating the appropriateness of a move to bill-and-keep for 8YY traffic. *Cf. FNPRM* at 26, ¶ 87. Moving 8YY originating access to bill-and-keep thus puts originating and intermediate providers in the position of subsidizing the IXCs, who use the originating and intermediate providers' networks free of charge as the IXCs ever more aggressively market their 8YY services, increasing their customer revenues but sharing none of them with the other providers whose networks they make greater and greater use of. Moreover, it is an intrinsic characteristic of 8YY calling that the called party is paying for the call because it wants to encourage such calls to be made to it. The customer paying for the 8YY service, such as a business with a call center, has full control over the volume of calls that use it. If 8YY service is priced by an IXC to cover compensation to unaffiliated carriers for their role in delivering traffic to the IXC for delivery to a business's call center, the service is priced appropriately. It is an equally intrinsic characteristic that the calling party expects the call to be free. *Cf. Dissenting Statement of Commissioner Jessica Rosenworcel*, *FNPRM* at 50. To nonetheless require the *calling* party's provider to split the cost, and likely have to increase its rates to the calling party to do so, is to deceive the consumer. Further complicating cost recovery is that the Commission nonetheless expects that LECs will not increase charges to their customers, except possibly through higher overall rates. *FNPRM* at 19, ¶ 61; *FNPRM* at 20, ¶ 63. (And, as noted earlier, intermediate providers have neither the calling nor the called party as their customer in an 8YY call.) The IXC's customer, in contrast, knows what it is paying to receive the calls, and it is in a position to judge whether it is receiving adequate value for the cost.

[19] The IXCs have shown no reason why assessing originating access charges with respect to 8YY calls should be revisited without development of a full record, other than that it would uniquely benefit them. The Commission can and should address access arbitrage "bad practices" immediately, however, while leaving time for in-depth review of the record with respect to the significant costs as well as any benefits of a complete shift in the 8YY intercarrier compensation system, a far more complex issue.

III. THE COMMISSION SHOULD PROMPTLY ADOPT RULES TARGETING BAD PRACTICES OF BAD ACTORS.

The Commission instead should limit its near-term rule changes to targeted approaches that can expeditiously and effectively eliminate 8YY access arbitrage situations.[20] These approaches include declaring certain practices of "bad actors" to be unjust and unreasonable under the Communications Act,[21] enlisting industry cooperative efforts to identify and shut down those activities, and promoting establishment of efficient direct connections between providers when warranted by the amount of traffic exchanged between them.

A. Bad Practices That Result in 8YY Arbitrage Can Be Deterred.

In the *FNPRM*, the Commission described several practices that either individually or in combination have led to access arbitrage using TFNs. One example of this is using automated calling devices to make "hang-up" calls to dial 8YY numbers automatically and repeatedly,

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[20] In this regard, the Commission must recognize that in the case of normal 8YY calling, the traffic stimulation involved – increasing the amount of 8YY calling – is solely of the IXCs' making, in promoting 8YY calling. In discussing 8YY traffic in the *USF/ICC Transformation Order*, the Commission expressed its view that "when access traffic is being stimulated, the party receiving the shared revenues has an economic incentive to increase call volumes by advertising the stimulating services widely." *USF/ICC Transformation Order* at 217, ¶ 673. In the case of 8YY traffic under a bill-and-keep regime, it is the 8YY providers – the IXCs – that have the economic incentive to stimulate traffic, because they have to pay *no* compensation to upstream providers, no matter how much traffic the IXCs send across upstream networks. The other providers in the call path of an 8YY call are entitled to compensation for their services, and in this case neither recovery from the calling party nor in the form of explicit support is available, thus contradicting an underlying premise of bill-and-keep. *See USF/ICC Transformation Order* at 242, ¶ 737 (under bill-and-keep a carrier looks to its end-users for network cost recovery, with needed explicit subsidies coming from the Connect America Fund). If the IXCs find the cost of that compensation reduces the profitability of the service, they can (although they may not want to) charge their customers higher rates, or stop their usage stimulation. This option is not available to the other providers, and the IXCs should not be entitled to maintain their profits or avoid customer rate increases by squeezing upstream providers instead of paying them usage-based access charges for 8YY calls.

[21] *Cf. In the Matter of Developing a Unified Intercarrier Compensation Regime*, Declaratory Ruling, DA 12-154 (Chief, WCB released Feb. 6, 2012) (addressing rural call completion concerns) ("*RCC DR*").

without any intent to make an actual call to the dialed number, or extending the duration of a completed call for a protracted period. Another example is using robocallers to dial controlled TFNs for the specific purpose of generating database queries, rather than to complete calls.[22] These practices are not typical of normal 8YY calling and reflect an intent to defraud the called party and its TFN provider. These bad practices also adversely affect consumers who may be unable to complete calls because the fraudulent calls tie up the 8YY numbers. In both respects, these practices are not in the public interest and are violations of the Communications Act that are subject to existing enforcement proceeding remedies.

Because fraudulent calls have no purpose other than to enrich those responsible for them,[23] the Commission can and should prohibit them. It can declare it an unreasonable practice for an entity to engage in such calling practices, and in addition to taking enforcement action, the Commission can authorize other providers to refuse to complete such calls or to immediately discontinue service (whether offered under tariff or under contract) to any entities the service provider reasonably believes to be engaging in such prohibited conduct.[24] By such action, the Commission can empower industry efforts to identify and eliminate the activities of bad actors in 8YY calling streams.

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[22] *See supra* n.4.

[23] In contrast to other access arbitrage situations, such as "free" conference calling, for example, there is evidence of direct consumer harm, and no consumer benefit, from the challenged practices.

[24] *Cf. RCC DR.* To the extent that preventing illicit 8YY-related robocalling could be deemed "call blocking," the Commission could issue a clarifying ruling.

B. Industry Cooperation Can Limit Opportunities for "Bad Actors" to Engage in Prohibited 8YY Arbitrage.

Just as service providers have worked together to identify and address situations in which there were instances of unacceptably low rural call completion rates, which in some cases were due to the activities of "bad actors,"[25] service providers have also worked independently and cooperatively to address instances of improper 8YY calling, and they have devoted substantial resources to these activities.[26]

For example, West's Vice President of Government and Regulatory Affairs, Bob McCausland, is a member of both the NANC and the NANC's Call Authentication Trust Anchor ("CATA") Working Group (for STIR/SHAKEN). West is an active and engaged member of the USTelecom Industry Traceback ("ITB") Team and of the CTIA Robocall Working Group, and West was highly engaged in the Robocalling Strike Force. West is also an original member of the ZipDX-led Stopping Robocalls Alliance and a member of the Invoca-led Fraud Investigation and Remediation Group. Through participation in such cooperative industry efforts, service providers have taken an active role in identifying and eliminating instances of abuses of the telecommunications system.

West has also developed internal procedures designed to minimize opportunities for abuses of its network. West customers (whether using the West network under tariff or under an

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[25] *See*, e.g., *HyperCube RCC Ex Parte*.

[26] *See FNPRM* at 13, ¶ 38 (acknowledging that "at least one" competitive local exchange carrier recommended direct case-by-case federal enforcement action and cooperative industry action against bad actors, had customer contracts with anti-fraud provisions, and opposed the move to bill-and-keep). As shown here, contrary to the complaints of the IXCs, bad actors, not intermediate providers, are the source of the abusive arbitrage. *Cf. FNPRM* at 25, ¶ 84.

individually negotiated agreement) are subject to West's Acceptable Use Policy ("AUP").[27] This policy permits customer usage monitoring at any time in West's sole discretion, including permitting West to report to governmental authorities activities that are or appear to be illegal. Moreover, the policy expressly prohibits misuse of West's services, including fraudulent activity and obtaining services with the intent to avoid payment. West can and will terminate a customer for violating the AUP by engaging in such practices.

Moreover, when a new customer relationship is established, West implements special procedures designed to ensure that it understands the customer's anticipated network usage and that that network usage is in compliance with the West AUP. West carefully monitors the customer's traffic ramp-up as the customer initiates and increases network usage. If such usage is inconsistent with projected traffic patterns, West may implement appropriate traffic management activities to ensure compliance with the West AUP and agreed network utilization parameters. In cases where there may be an AUP violation, West may "503 back" – or reject – tendered traffic, returning it to the customer without call completion on the West network.

Other service providers make similar substantial efforts to prevent network abuse and fraud, and through their cooperative organizations, they may, and do, share information regarding bad practices they have experienced and resolved, pursuant to the Section 222(d)(2) exception to the Customer Proprietary Network Information ("CPNI") rules (allowing disclosure of CPNI obtained from customers in order "to protect . . . other carriers from fraudulent, abusive, or unlawful use of . . . [a carrier's] services."). Carriers also regularly cooperate in

[27] The term "AUP" is used generally here and includes tariff and agreement provisions that complement existing AUPs, whether publicly-posted or incorporated within such tariffs and agreements.

resolving detected problems.[28] Commission express prohibition of abusive 8YY calling practices not only will in itself deter these activities but also will facilitate providers' cooperative and individual efforts to stop them.

C. Efficient Direct Interconnection Can Further Limit the Situations in Which 8YY Access Charges Are Incurred.

Where 8YY access charges are applicable, they are essential to ensure compensation of all providers involved in termination of an 8YY call. 8YY access charges may, however, be avoided through certain efficient interconnection arrangements.

IXCs may minimize billed access charges and opportunities for arbitrage abuse by entering into direct connects with other providers. West has long advocated for an objective, traffic-based rule that, absent unusual circumstances,[29] would require carriers to enter into good faith negotiations for a direct connection arrangement if the party seeking the arrangement demonstrated that the traffic between them would require the capacity of facilities equal to a minimum of 4 T-1s, generally recognized within the industry as a traffic volume at which direct connections are viewed as more efficient than indirect connections. (An equivalent standard for IP networks or other modern technology would be a sustainable average of 200,000 monthly MOUs (over a 30-day period).) Traffic exchange over the direct connect facilities would be required for all the traffic exchanged by the parties — *i.e.*, for all local and long distance traffic as well as all wholesale and retail traffic. Once the direct connect was in place, charges for certain switching and transport charges would be inapplicable for traffic routed directly.

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[28] *See*, *e.g.*, *Comments of HyperCube Telecom, LLC,* WC Docket No. 10-90, *et al. (*filed Feb. 4, 2012) ("*HyperCube RCC Comments*") at ii, 3 – 9.

[29] *See id.* at 6 (concerning hardship exceptions in Section 251(f) proceedings for small LECs).

By adopting a rule requiring good faith negotiation of efficient direct connect arrangements, the Commission can further reduce the situations in which 8YY access charges are at issue. Because the predicate for direct connections is that they are efficient and thus mutually beneficial for the parties, adopting a traffic-based direct connection requirement would not require development of a full record concerning the possible need for additional compensation to providers in the call paths of 8YY calls.[30] (In the 8YY context, only the called party's provider is in a position to recover costs from its customer – and indeed the called party's provider can charge that customer whatever it chooses, disciplined only by the highly concentrated 8YY marketplace.[31])

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[30] 8YY calling involves the atypical context of a totally imbalanced one-way traffic stream where only one provider – the called party's provider – is in a position to recover costs from its customers, and that is the carrier responsible for all traffic generation through successful marketing stimulation of free calling services. The Commission should therefore not replace the current 8YY originating access charge compensation system without developing a full record and carefully evaluating the potential adverse consequences of a shift to bill-and-keep in this unique situation, including consideration of the need for and methodology for providing explicit cost recovery subsidies to other providers in the call path.

[31] The calling party reasonably expects 8YY calls to be free of charge, whatever equipment it uses for initiating a call, because that is how the service has been marketed to consumer calling parties. The calling party's service provider is unable to assess per call charges for 8YY calls, and many originating providers are also subject to rate regulation. Neither the calling party nor the called party is a customer of an intermediate provider, so it must look to the called party's provider for cost recovery. In a bill-and-keep regime, the called party's provider gets a free ride on the other providers' networks if there are no access charges and a one-way traffic stream. When the called party's provider (*i.e.*, an IXC) markets to more and more customers more and more 8YY numbers (at whatever rates it chooses), the size of the free ride gets bigger and bigger, because 8YY calling is not just imbalanced, it is a one-way traffic stream. Usage-sensitive access charges are a highly efficient way of ensuring that IXCs are not free-loaders on the other providers' networks. Certainly IXCs favor bill-and-keep, because it costs them nothing and completely eliminates all costs, not just marginal costs, for use of the other providers' networks. A *no-compensation* system, however, is not a fair compensation system. And it is the IXCs and their toll-free subscribers that are the usage stimulators here. The other providers are required to complete the calls, regardless of volume or length, but they have no control of the usage. "Reciprocal compensation" is a contradiction in terms here, where there is neither reciprocity nor compensation. Similarly, "bill-and-keep" has no meaning, when the other providers are unable to bill, much less keep, any revenues at all related to this one-way traffic stream. While the

statute allows the Commission to adopt a bill-and-keep system, the Commission itself has premised its implementation on the ability of other providers to recover costs from their end-users or from explicit support mechanisms. *USF/ICC Transformation Order* at 252, ¶ 757 (where the Commission stated that the system would "still allow for cost recovery via end-user compensation and, where necessary, explicit universal service support."). In the 8YY context, neither end-user compensation nor universal service support is available, so if the cost recovery the Commission recognized was appropriate is not available from end-users or universal service support, it can only come from access charges, which are usage-based and efficiently and directly track the use of the other providers' networks made by the IXCs. It is only the IXCs and their customers who are in a position to determine the network usage, and eliminating access charges allows the IXCs to price their 8YY services below cost (because they would get use of the other providers' network free of charge). The regulatory arbitrage in this case would be on the part of the IXCs, taking advantage of bill-and-keep to make use of other providers' networks without paying for it. The market incentives for rational pricing are totally absent – the IXCs could charge whatever they chose, and the dominance of a few providers already allows for monopolistic pricing. (No wonder the large 8YY subscribers support bill-and-keep – promises of price reductions – effected at the expense of the other providers in the call path – may be their only chance for 8YY service price reductions. *See FNPRM* at 27, ¶ 94.) The 8YY subscribers would also be given incorrect market cost information, so they would make usage decisions based on pricing that ignored approximately half the costs of the calling (excluding the IXC marketing and billing costs). In this situation, the Commission's view that "a bill-and-keep framework helps reveal the true cost of the network to potential subscribers by limiting carriers' ability to recover their own costs from other carriers and their customers," *USF/ICC Transformation Order* at 246, ¶ 745, is turned on its head. It is the calling party's carrier who is unable to recover its costs, and it has no influence on subscriber decisions. Here, where traffic is one-way only, potential subscribers receive *false* information about the true cost of the network because their provider is getting a free ride. And if it is really the case that "both the calling and the called party benefit from a call," *USF/ICC Transformation Order* at 251, ¶ 756, it certainly is unlikely that in the case of 8YY traffic, they benefit equally, since the called parties are spending a lot of money (at unregulated rates) to make calling free to their callers and encourage them to call. Similarly, in the case of one-way calling streams, "the 'direction of the traffic'" is *not* irrelevant – *the direction of the call is the whole point* – in-bound to the 8YY subscriber, which wants to encourage the calling. *Cf. USF/ICC Transformation Order* at 251, ¶ 756. That is not to say encouraging such calling is "a bad thing" – certainly the called parties must think it is not. But it is a *different* thing, and not a thing for which a bill-and-keep no-compensation scheme is appropriate. The Commission has recently issued multiple decisions and rules addressing access stimulation. Here, the Commission must recognize that the IXCs who led the charge against access stimulation are now the usage (and access) stimulators, and they are trying to lure the Commission into imposing a bill-and-keep regime in order to engage in what is in effect a regulatory arbitrage scheme of their own that allows them to use other providers' networks without paying anything at all – and this time the regulatory arbitrage opportunity would be specially created for them by the Commission! Just as the Commission found it necessary to clamp down on the access stimulation the IXCs opposed, now the Commission should decline to participate in the access stimulation arbitrage scheme the IXCs themselves are vociferously advocating, which the Commission can do merely by retaining the *status quo* 8YY originating

A rule requiring providers to negotiate in good faith traffic-warranted direct connects could be adopted much more quickly than the major shift to a bill-and-keep regime advocated by the large IXCs. It would also limit the situations in which 8YY access charges are applicable, and the number of disputes over them, provided, of course, that the IXCs and their affiliates complied with their direct connection obligations.[32]

West therefore recommends that, rather than adopting rules initiating an immediate transition to a bill-and-keep regime, the Commission instead take as the first step, and perhaps the only step, in its 8YY intercarrier compensation system review, adoption of a requirement that, where traffic between two providers warrants under the objective industry standard for efficient interconnections, the providers must enter into good faith direct connection negotiations covering the exchange of all traffic between them.

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access charges regime. (In the case of free conferencing, for example, the public was encouraged to make calls because the service was free – and thus much cheaper than IXC services. Here too the public is encouraged to make calls because the service is free. The key difference for the IXCs is that in this case the IXCs are the sole revenue collectors. This time, it is the other providers that would be put to great expense by the IXCs' free-of-cost-to-them usage stimulation activities.) The Commission certainly should not prohibit 8YY calling, but if it will not allow all providers in the call path to get reasonable compensation, then it will soon find that there is far less competition in the telecommunications marketplace, and needed services will disappear, as providers leave the market when their costs increase because of IXC marketing of 8YY calling, and their revenues not merely decline but disappear. In short, yes, in this case "traffic imbalances make 8YY calls ill-suited for bill-and-keep." *See FNPRM* at 26, ¶ 87.

[32] In the *USF/ICC Transformation Order*, the Commission recognized that "the statute provides that each carrier will have the opportunity to recover its costs, it does not entitle each carrier to recover those costs from another carrier, *so long as it can recover those costs from its own end users and explicit universal service support where necessary*." *Id.* 252, ¶ 757 (*emphasis added*); *see also, e.g., id. at* ¶ 742, ¶ 775 & n.1410, ¶ 849, ¶ 994. When the Commission examined this issue on a full record in earlier proceedings, it retained access charges for 8YY calls and expressly declined to apply bill-and-keep to 8YY traffic specifically because of cost recovery concerns. Nothing in this record warrants revisiting that decision now. The Commission's proposed rules, shifting compensation to bill-and-keep, however, would foreclose the opportunity for compensation for intermediate providers with neither the calling nor the called parties as customers.

IV. TARIFFS PLAY AN IMPORTANT ROLE IN ENSURING COMPENSATION AND ENFORCEMENT OF PROVIDER ACCEPTABLE USE POLICIES ("AUPs") AND OTHER POLICIES.

The Commission correctly has not proposed here to forbear from permissive tariffing. While West has repeatedly expressed its support for negotiated agreements between providers, a filed tariff remains a necessary backstop for situations in which a negotiated agreement either does not exist or is inappropriate. It can also be an important vehicle for eliminating bad practices found in an 8YY call stream.

For those situations in which there is no negotiated agreement between providers, and no direct connections, it is essential that carriers be entitled to efficiently offer their services pursuant to tariffs specifying the pricing and terms and conditions applicable to the services, including limitations of liability.[33] Tariffs establish default rates from which negotiation of agreements proceeds and are also critical for fulfilling carrier obligations not to engage in unreasonable discrimination in serving customers. Permissive tariffing also allows tandem providers to avoid the high costs associated with negotiation of individual agreements with the many different service providers that utilize tandem services. The default, legally enforceable rates and terms established under permissive tariffs thus allow tandem providers to drastically reduce market entry and transaction costs and have an efficient means of charging for services provided.

Significantly, without a tariff, not only is the carrier unable to bill for its services to intermittent or occasional users but also the carrier is unable to establish and enforce its AUP

[33] Rather than requiring detariffing, the Commission in this docket has in the *FNPRM* only addressed the rates that may be specified in tariffs. However, given previous calls for tariff forbearance, it is important that the Commission recognize that permissive tariffing must continue to be an option for carriers. Permissive tariffs should continue to be deemed lawful when filed pursuant to Section 204(a)(3) of the Act or otherwise presumed lawful when made effective on one day's notice.

against them. Tariffs are thus also necessary to enable a carrier to shut down network users who are found to be bad actors engaging in bad or prohibited practices.

V. THE PROPOSED TARIFF RULES REQUIRE MODIFICATION.

A. Any Single Database Dip Rule Requires an Exception When Incomplete Call Information Is Received by a Downstream Provider.

With respect to complaints by IXCs that they are unnecessarily paying for multiple "database dips" used to route 8YY calls,[34] West could support adoption of a tariffing rule that allowed only one database query per call,[35] provided that there is an exception for calls that lack adequate call information for completion of the call transmitted downstream to an intermediate provider. When West is delivered a call that omits such information, it has no knowledge of whether the upstream provider made a database query, and no choices except either to return the call to the carrier from whose network the call entered West's network, or to itself consult the database, regardless of whether an upstream provider in fact made its own database query but neglected to pass the required routing information downstream to the next provider. Having had

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[34] *See FNPRM* at 8, ¶ 17. An upstream provider is supposed to pass through to the downstream provider routing information obtained in a database query. The downstream provider should not, however, be penalized and denied compensation if the upstream provider failed to do so, because the only way the call could be completed (and the IXC's customer receive a completed call it is paying for) is for the downstream provider to query the database. *Cf. FNPRM* at 23, ¶ 77 (inquiring as to the appropriateness of multiple database queries for a single 8YY call). When the Commission recently adopted other rules targeting arbitrage in the context of access stimulation, the Commission properly took pains to avoid penalizing providers not engaged in access stimulation by excluding them from the definition of access stimulators. *See USF/ICC Transformation Order* at 218, ¶ 675.

[35] *See* Proposed Rule § 51.923 (b), Limitation on Database Query Charges for Toll Free Calls, *FNPRM*, at 36, Appendix A, ("(b) Notwithstanding any other provision of the Commission's rules, on [the first July 1/annual tariff filing after rule adoption], LECs involved in the routing of a Toll Free Call to a provider of Toll Free calling services may not, collectively, charge the provider of Toll Free calling services more than one database query charge per Toll Free Call."). This rule should not be adopted without an amendment requiring compensation of a downstream provider if it the upstream provider does not provide call information despite having made a database query.

to consult the database in order to complete the call, West, and other similarly-situated providers, are entitled to compensation for the services they have necessarily performed.[36]

B. Transport Charges Should Not Be Set on an Arbitrary Basis.

Similarly, if the Commission adopts new tariff requirements for 8YY access charges, with respect to transport charges,[37] West could support, as it has in other dockets,[38] a cap on the mileage used to compute the transport component of an access charge.[39] However, such a cap, to be enforceable, cannot be set arbitrarily. Instead, it must reflect Commission consideration of the relevant factors bearing on the adequacy of the compensation to be received from the combined access charge rate components.[40]

In its "alternative proposal," however, the Commission has apparently selected a transport rate cap without providing any analysis of whether or how that cap adequately

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[36] West has internal policies and procedures, however, that minimize the possibility that an IXC would be charged multiple query charges for a single call. For example, when West receives a call from another provider that normally handles query charges, even if the call is missing call information necessary for onward routing of the call, and even when West therefore has to make a query of its own, West does not bill the IXC for the West database "dip."

[37] See *FNPRM* at 10, ¶ 26 (discussing purported "mileage pumping" in transport charges).

[38] *See Reply Comments of West Telecom Services LLC*, WC Docket 18-155 (filed Ag. 3, 2018) ("*West Access Charge Arbitrage Reply Comments*" at 9.

[39] However, a rule that requires the limitation of mileage creates a tremendous disincentive for an IXC to obtain direct connects when it has sufficient traffic over a particular route. To counter-balance this disincentive, the Commission should expressly require carriers meeting the traffic exchange volume standard to negotiate direct connection arrangements covering all their and their affiliates' mutually-exchange traffic in good faith.

[40] *See West Access Charge Arbitrage Reply Comments* at 9. The mere fact that AT&T reports that negotiated rates may be lower than tariffed rates, *FNPRM* at 8, ¶ 19, is evidence of nothing more than that providers entering into negotiated agreements do so for their mutual benefit, and it is not evidence of the appropriateness of the tariffed rate. Negotiated rates would be expected to be lower than default tariff rates, since the tariffing provider presumably derives additional benefit under the negotiated agreement that offsets the rate reduction to its satisfaction.

compensates the affected carriers.[41] The Commission should therefore further review the appropriateness of its rate cap proposals and modify them if necessary before adopting a final rule.

C. Database Query Charges Should Not Be Set on an Arbitrary Basis.

Similarly, if the Commission adopts new tariff requirements for 8YY access charges, the Commission should ensure that any database query charges are set on a reasonable basis that fairly compensates the provider supplying the query services. In the case of database query charges, the Commission has proposed a rate of $.0015 per Toll Free Call.[42] The Commission explained that it had selected that rate, which was the rate (after rounding) in the CenturyLink federal tariff covering Idaho, because it was the lowest rate shown on a list supplied by AT&T of different query charges of multiple service providers.[43] As shown on Attachment A, compiled from the CenturyLink FCC No. 6 Tariff effective July 1, 2016, however, the rate in another CenturyTel jurisdiction, Odon, IN, is substantially higher, at $0.01042400.[44] Similar variations in CenturyTel affiliates are shown on the AT&T *Ex Parte* relied on by the Commission. Clearly, query charge rates vary greatly, even in the tariffs of affiliated companies.

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[41] This approach would "cap the mileage that carriers can charge for tandem switching and transport based on the number of miles between the originating end office and the nearest tandem in the same local access and transport area" and would "cap tandem switching and transport rates based on the rates charged by the incumbent LEC serving the LATA in which the call originates, without regard to the rates charged by the incumbent LEC serving the area where the tandem is located." *FNPRM* at 16, ¶ 49.

[42] *See* Proposed Rule § 51.923, *FNPRM* at 36, Appendix A.

[43] *See FNPRM* at 21, ¶ 69 and n.149.

[44] The tariffed query rates identified in the AT&T submission relied on by the Commission ranged as high as 1.50¢. AT&T Feb. 12, 2018 *Ex Parte*, Attach. at 10.

As noted in the *FNPRM*,[45] Inteliquent has explained this disparity is the result of query rates being set not in a vacuum but in the context of a set of rate components, with higher rates for one component offset by lower rates for another component:

> "[r]ate structures between incumbent local exchange carriers trade off non-recurring setup charges, monthly recurring interconnect charges, 8YY query charge, per minute of use switching charges, and per minute per mile transport charges. For example, although some carriers charge a materially higher non-recurring set up charge or monthly recurring interconnect charge, those higher rates typically are offset by a lower per minute of use switching charge. Similarly, the 8YY DIP query charge may be high because the switched per minute of use charge is low, and vice versa." (*footnotes omitted*)

Inteliquent's explanation is accurate, and it demonstrates that it makes no sense to compare the rates for query charges in isolation. Selecting a nationwide rate cap on the basis of the lowest rate on a list would in itself be arbitrary if all query rates were set in the same way, but picking a rate cap on the basis of the lowest rate in a list of query rates that are individually and asymmetrically determined as components of multi-component rate structures is indefensible and carrying arbitrariness to the extreme. Further, the proposed rate cap leaves little room for negotiation of this rate element in the context of bilateral comprehensive intercarrier 8YY compensation agreements between providers.

While still set in an arbitrary manner, a query rate cap set at the average of the rates shown on AT&T's chart would at least suggest that the Commission had tried to include a margin to give some leeway to account for at least some of the different circumstances and factors considered in developing specific query rates. The Commission could try adopting such an average rate approach for a trial period of three years, and then the Commission could review

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[45] FNPRM at 22, ¶ 73 and n.156, quoting an Inteliquent *ex parte* filing (Letter from Gerard J. Waldron, Counsel to Inteliquent, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al., at 2 (filed Dec. 21, 2017)).

the marketplace to determine whether providers had indeed left the market. Such departures may indicate that providers' inability to operate in a profitable way with rates set as low as the Commission required may have led to the reduction in competition.

D. Proposed Tariff Rules Transitioning to a Bill-and-Keep No-Compensation Regime Would Have an Adverse Impact on the Competitive Marketplace.

Acting in their own self-interest, the large IXCs are attempting to convince the Commission that a bill-and-keep regime makes sense even in the atypical 8YY traffic situation in which traffic is not just imbalanced – *it is all in one direction*. When examined more closely, however, it is apparent that moving 8YY intercarrier compensation to bill-and-keep is yet another example of regulatory arbitrage, but this time the large IXCs are the traffic stimulators, as well as the only providers able to recover costs from their own customers. Nonetheless, in urging bill-and-keep, the IXCs seek to have the other providers in the 8YY call path, and the consumer customers who think they are being offered free calling, subsidize all the costs imposed on their networks by the IXCs' usage stimulation.

The upstream providers whose networks are being used to route 8YY calls to the IXCs' customers have no ability to control the amount of such network usage by the IXCs, but without usage-sensitive access charges, the upstream providers would receive no compensation to offset the costs forced on them by the free-riders (much less have an opportunity for a reasonable profit). The IXCs would have no market discipline to reduce their usage, because they would have no obligation to pay upstream providers anything for that usage. Rather, they would have every incentive to pump as much traffic onto those upstream networks as they can. And the IXCs can be expected to continue to encourage the use of more and more TFNs by their customers for ever more new purposes, stimulating ever more upstream network usage. Regardless of the amount of traffic they receive, however, the upstream providers would still be

obligated to supply the routing and query services necessary to complete the calls. This "squeeze" by the IXCs of the upstream providers would leave them with no cost recovery mechanism, much less an ability to make a profit.

Upstream providers also lack the ability to cover any costs with subsidies or calling party customer revenues. Intermediate providers have no end-user caller-customers, and no source of explicit subsidies. Those upstream providers who do have caller customers cannot recover costs by charging their calling party customers for their 8YY calls, because those calls are supposed to be free. Even those receiving Connect America Fund ("CAF") support would not receive additional subsidies. Providers would have to either reduce services or raise overall rates. Consumers would subsidize 8YY calling by other customers making more toll-free calls, and all consumers would be indirectly (and unknowingly) subsidizing the profits of the very IXCs and their customers who promised the consumers free calling – either by paying higher overall rates, or by receiving service reductions.[46] Under a bill-and-keep regime, upstream providers and consumers would be left holding the bag, because bill-and-keep would force upstream providers to suffer unlimited, uncompensated network usage by the IXCs. A shift to bill-and-keep in the 8YY context is a win-win situation for the IXCs, but it is a lose-lose proposition for consumers and upstream providers.

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[46] *Cf. USF/ICC Transformation Order* at 242, ¶ 738 (where the Commission found, apparently based on its experience with the mobile services and IP traffic exchange markets with very balanced traffic, *see id.* at ¶ 737, that in a bill-and-keep systems "customers pay only for services that they choose and receive, eliminating the existing opaque implicit subsidy system under which consumers pay to support other carriers' network costs"). In the case of the no-compensation bill-and-keep system when applied to the one-way stream of 8YY traffic, however, the opposite is true. *See also id.* at ¶ 738 (asserting a "bill-and-keep methodology" eliminates "carriers' ability to shift network costs to competitors and their customers.") In this situation, a bill-and-keep methodology enables the IXCs to force other carriers' networks and their customers to bear costs of a service generating revenues only to the IXCs.

Under bill-and-keep in this one-way calling situation, 8YY subscribers (who are in a position to assess the value of the service to their businesses and adjust their subscriptions accordingly) may make money on products sold via 8YY calls, but they would hardly be offering the promised free calling. The IXCs, operating in a highly concentrated 8YY market, and with unregulated rates they can adjust at will, are certainly making money on the 8YY calls, and adoption of the rules proposed in this docket will let them make much more money. Left in the lurch, however, are both the providers who route the calls to the IXCs and the consumer calling parties who were stimulated into making 8YY calls by 8YY subscribers' (and indirectly by IXCs') marketing efforts and promises that the calls are free. The proposed rules make free calling anything but free, except to the IXCs. Implementing bill-and-keep in this context forces those without the power to control the traffic volume to subsidize the monopoly profits of those who do control the traffic volume.

In this specific context of a one-way traffic stream, serious adverse marketplace consequences will be the result of forcing confiscatory non-compensatory bill-and-keep, or arbitrarily-determined below-market capped rates, on upstream providers in the 8YY call path. Upstream providers and consumers will be harmed solely in order to reduce the costs of the IXCs who control the traffic volume and who stimulate increased volume through their own and their subscribers' marketing to consumers. Providers who no longer find it profitable to stay in the market will leave it, and competition and consumer choice will be reduced, which is contrary to the public interest. The Commission should therefore withdraw all the proposed tariff rules as inappropriate in the context of the 8YY one-way traffic stream.

VI. CONCLUSION

For the reasons described above, the Commission should now adopt only narrow, targeted rules aimed at deterring toll-free calling arbitrage abuses. Despite the urging of the large IXCs to do so, the Commission should not hastily implement a full-scale revamp of the 8YY access charge regime. Once the bad actors and bad practices have been largely eliminated through implementation of the new rules, and through industry cooperation and expanded use of direct connect arrangements, the 8YY access charges that remain are necessary costs incurred by the IXCs for their use of other providers' networks. The IXCs must be held responsible for paying this compensation, and the Commission should reject the IXCs' efforts to squeeze other

providers whose services they have received instead of the IXCs' either themselves absorbing those costs or, as only they can, passing them on to their customers.

Respectfully submitted,

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September 4, 2018

ATTACHMENT A

TFN DATABASE QUERY RATES FROM CENTURYLINK (fka CENTURYTEL) FCC TARIFF NO. 6

Attachment A

CenturyLink (fka CenturyTel) - FCC No.6

Data Base Query - Number Delivery Element Per Query	RC Rate	Effective Date
Local Number Portability Query Charge	0.00372600	7/1/2016
Arkansas	0.00164600	7/1/2016
Central Arkansas	0.00560000	7/1/2016
Mountain Home (AR)	0.00231900	7/1/2016
Refield (AR)	0.00241900	7/1/2016
Russelville (AR)	0.00339800	7/1/2016
Siloam Springs (AR)	0.00489600	7/1/2016
South Arkansas	0.00239900	7/1/2016
Colorado	0.00605600	7/1/2016
Idaho	0.00153600	7/1/2016
Central Indiana	0.00560000	7/1/2016
Odon (IN)	0.01042400	7/1/2016
Evangeline (LA)	0.00292000	7/1/2016
Northern Michigan	0.00337300	7/1/2016
Upper Michigan	0.00543800	7/1/2016
North Mississippi	0.00441200	7/1/2016
New Mexico	0.00473000	7/1/2016
Adamsville (TN)	0.00560000	7/1/2016
Claiborne (TN)	0.00334100	7/1/2016
Ooltewah-Collegedale (TN)	0.00527500	7/1/2016
Lake Dallas (TX)	0.00560000	7/1/2016
Port Aransas (TX)	0.00560000	7/1/2016
Fairwater-Brandon-Alto (WI)	0.00594900	7/1/2016
Forestville (WI)	0.00755900	7/1/2016
Larsen-Readfield (WI)	0.00411200	7/1/2016
Northern Wisconsin	0.00167700	7/1/2016
Northwest Wisconsin	0.00147300	7/1/2016
Southern Wisconsin	0.00335900	7/1/2016
Upper Midwest [Chester & Postville IA; Midwest WI (Wayside)]	0.00289800	7/1/2016